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9

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT, NEVADA

12 MARIE ANTIONETTE GUZMAN, as
Administrator of the Wrongful Death
13 Estates of RAYMOND GUZMAN and
MARY GUZMAN,

14 Plaintiff,

15 vs.

16 THE PEP BOYS MANNY MOE AND
17 JACK OF CALIFORNIA, a Pennsylvania
corporation; COOPER TILE & RUBBER
18 COMPANY, a Delaware corporation;
GENERAL MOTORS COMPANY, LLC., a
19 Delaware corporation; ROE
COMPONENT PART MANUFACTURER;
20 ROE CORPORATIONS I through X,
inclusive

21 Defendants.
22

CASE NO. 2:17-cv-00386 -APG-GWF

DEFENDANT THE PEP BOYS MANNY
MOE AND JACK OF CALIFORNIA'S
MOTION FOR DETERMINATION OF
GOOD FAITH SETTLEMENT

23
24 Defendant PEP BOYS MANNY MOE AND JACK OF CALIFORNIA, by and through
25 its counsel of record, Josh Cole Aicklen, Esq., Paul A. Shpirt, Esq., and Amber White-
26 Davidson, Esq., of the law firm LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby
27 moves to establish that its settlement with Plaintiff MARIE ANTIONETTE GUZMAN, as
28 Administrator of the Wrongful Death Estates of RAYMOND GUZMAN and MARY

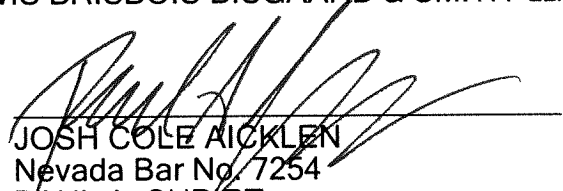
1 GUZMAN, was made in good faith pursuant to NRS 17.245.

2 This Motion is supported by the papers and pleadings on file in the above-captioned
3 action and the attached Memorandum of Points and Authorities.

4 DATED this 4th day of October, 2017.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By


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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The instant matter arises out of single car roll-over accident, which fatally injured
4 MARY GUZMAN and RAYMOND GUZMAN. The primary cause of the accident was
5 preliminarily determined to be a tire failure (although the cause of the failure is unknown).
6 The tire in question is a "Dakota" tire, made by COOPER TIRES. As a result of that
7 accident, the estate of MARY and RAYMOND GUZMAN sued COOPER, GENERAL
8 MOTORS and PEP BOYS, claiming that PEP BOYS distributed the subject tire.

9 However, during discovery, Plaintiff admitted that it had no information linking PEP
10 BOYS to the subject tire. There was no evidence that the subject tire was purchased
11 from PEP BOYS, and there was no evidence that the subject tire was ever installed by
12 PEP BOYS. An internal investigation further revealed that PEP BOYS had no work
13 orders and never performed any work on the vehicle that Plaintiffs were riding in at the
14 time of the subject incident. It appears that PEP BOYS was only named as a Defendant
15 because it typically retails "Dakota" brand tires. But, to wit, there is no evidence that this
16 particular tire was ever purchased new from PEP BOYS. As such, on September 28,
17 2017, Plaintiff agreed to settle the underlying matter with PEP BOYS and dismiss all
18 claims against PEP BOYS for \$5,000.00.

19 Accordingly, as the parties negotiated this settlement through an arms length
20 transaction, PEP BOYS respectfully requests that this Court find that Plaintiff and PEP
21 BOYS have entered the underlying settlement in good faith.

22 II. LEGAL ARGUMENT

23 A. Good Faith Settlement Standard

24 Pursuant to NRS 17.245, "[w]hen a release or a covenant not to sue or not to
25 enforce judgment is given in good faith to one of two or more persons liable in tort for the
26 same injury or the same wrongful death:

- 27 (a) It does not discharge any of the other tortfeasors from liability for
28 the injury or wrongful death unless its terms so provide, but it
reduces the claim against the others to the extent of any amount

1 stipulated by the release or the covenant, or in the amount of the
2 consideration paid for it, whichever is the greater; and

3 (b) It discharges the tortfeasor to whom it is given from all liability for
4 contribution and for equitable indemnity to any other tortfeasor."

5 See, NRS 17.245.

6 In evaluating good-faith issues under NRS 17.24, the Nevada Federal District
7 Court evaluates the following factors:

- 8 1. The amount paid in settlement;
- 9 2. The allocation of the settlement proceeds among plaintiffs;
- 10 3. The insurance policy limits of settling defendants;
- 11 4. The financial condition of settling defendants; and
- 12 5. The existence of collusion, fraud or tortious conduct aimed to injure the
13 interests of non-settling defendants."

14 See, In re MGM Grand Hotel Fire Litig., 570 F. Supp. 913, 927 (D. Nev. 1983).

15 However, these factors are not exhaustive, and the determination of good faith
16 settlement should be left to the discretion of the trial court based upon all relevant facts
17 available. Azure Manor/Ranco De Paz Homeowners Assoc. v. D.R. Horton Inc., No. 2:15-
18 cv-01623-GMN-VCF, 2016 U.S. Dist. LEXIS 130494, at *5 (D. Nev. Sep. 20, 2016) (citing
19 The Doctors Co. v. Vincent, 120 Nev. 644, 651-52, 98 P.3d 681, 686 (2004)).

20 **B. Plaintiff and Defendant Reached the Instant Settlement in Good Faith.**

21 **i. The amount paid in settlement.**

22 The settlement amount represents a fair and reasonable amount in light of
23 complete lack of any liability or involvement as to PEP BOYS. Simply, as evidenced by
24 Plaintiff's responses to written discovery and Admissions, Plaintiff does not have the
25 requisite evidence to meet the required standard of proof to establish any claims against
26 PEP BOYS. Plaintiff, erroneously, assumed that PEP BOYS distributed the subject tire.
27 However, Plaintiff does not have any evidence to support that assertion and, in fact, PEP
28 BOYS' internal investigation revealed that it never serviced the subject automobile in any
of its locations. This proposed settlement amount will help avoid substantial and

unnecessary future litigation costs that the parties would incur preparing for trial. Accordingly, as Plaintiff is unable to establish PEP BOYS' liability and the settlement is essentially a nuisance value, the amount PEP BOYS paid is fair and reasonable.

ii. The allocation of the settlement proceeds among plaintiffs.

All settlement proceeds will go to all of the Plaintiff, MARIE ANTIONETTE GUZMAN, as Administrator of the Wrongful Death Estates of RAYMOND GUZMAN and MARY GUZMAN.

iii. The insurance policy limits of settling defendants.

Because of PEP BOYS' lack of liability, the parties did not consider PEP BOYS' insurance policy limits. However, PEP BOYS is self insured for purposes of this litigation and its insurance policy limits are inapplicable.

iv. The financial condition of settling defendants.

Because of PEP BOYS' lack of liability, the parties did not consider PEP BOYS' financial condition. However, PEP BOYS is solvent and continues to operate the business in multiple states.

v. The existence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants.

The parties reached the subject settlement after good faith negotiations at arms length through their respective counsel. There is no evidence that there was any collusion, fraud, or tortious conduct.

Accordingly, applying the aforementioned factors, this Court should find that the parties reached the settlement in good faith.

C. The Court Should Extinguish and Bar Claims for Contribution and Equitable Indemnity by any Other Parties.

Upon the Court's finding that Plaintiff and PEP BOYS reached the settlement in good faith, pursuant to NRS 17.245(1)(b), this Court should extinguish and bar any and all claims for contribution and equitable indemnity that were or could have been asserted by any party against PEP BOYS.

D. CONCLUSION

Based on the foregoing and all of the relevant facts surrounding the settlement, PEP BOYS respectfully requests that this Court find that the parties reached the instant settlement in good faith. Additionally, PEP BOYS requests that this Court dismiss all past, present, and future claims for implied indemnity, equitable indemnity, and contribution against PEP BOYS.

DATED this 4th day of October, 2017.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By

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**PEP BOYS MANNY MOE AND
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2017, I did cause a true and correct copy of DEFENDANT THE PEP BOYS MANNY MOE AND JACK OF CALIFORNIA'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT to be served via US mail as follows:

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